by the levy of special taxes, contracted with a municipality to furnish water for extinguishing fires. Because of failure to supply the amount contracted for, a citizen's building was destroyed by fire. *Held*, that the company has assumed a public duty, of which the contract is the measure, and for breach of which the company is answerable to this citizen in tort. *Mugge* v. *Tampa Waterworks Co.*, 42 So. Rep. 81 (Fla.).

For a discussion of the principles involved, see 13 HARV. L. REV. 226. *Cf.* also 19 *ibid.* 467; 15 *ibid.* 767, 784.

TRADE UNIONS — STRIKES — STRIKE AGAINST ONE MAN TO REACH ANOTHER. — Union stone-masons and non-union pointers were competitors for certain work of a special contractor on a building under construction by a general contractor. In order to coerce the former into discharging non-union men, walking delegates, empowered by the rules of their respective unions, caused strikes on other buildings of the general contractor. *Held*, that this is an unlawful conspiracy to interfere with the trade of another, which equity will enjoin. *Picket* v. *Walsh*, 78 N. E. Rep. 753 (Mass.).

It is now almost everywhere law that outsiders cannot be unwillingly dragged into labor disputes. For a discussion of the principles involved, see 17 HARV. L. REV. 558.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

VESTED AND CONTINGENT REMAINDERS. — In a recent article Professor Albert Martin Kales discusses the distinction between vested and contingent remainders, in the light of a new classification of future interests in land which he advances. *Future Interests in Land*, 22 L. Quar. Rev. 250, 383 (July, October, 1906). The classification suggested is based upon a division of all future interests into three mutually exclusive groups, — the division resulting from the fact that a future interest must come into possession either "by way of succession," as when it succeeds immediately the preceding estate; or "by way of interruption," when it cuts short the preceding estate. The three classes are, then: (*a*) estates which by the words of the limitation can come into effect only by way of interruption; (*b*) estates which are so limited that by the words of the limitation they can come into effect only by way of succession; and (*c*) estates which by the words of the limitation might come into effect either by way of succession or by way of interruption.

As to class (*a*), estates which are limited so as to come into possession only by way of interruption, such estates are uniformly held bad under the common law with the sole exception of the right of entry for condition broken, and are valid under the Statutes of Uses and Wills. As to class (*b*), estates intended to take effect only by way of succession, Mr. Kales concludes that all such estates are valid at the common law, even if after terms for years, and even if subject to a condition precedent. All estates in this class are vested remainders, it is said. Lastly, as to class (*c*), estates limited so that they might conceivably come into possession either by way of succession or by way of interruption, it is argued that such estates are, and alone are, contingent remainders. They are good when they actually can come into effect by way of succession, and fail otherwise. After estates for years they are always invalid at the common law, although probably valid under the Statutes of Uses and Wills.[1]

This classification, if correct, offers an excellent rule for distinguishing between vested and contingent remainders, though it must not be forgotten that

[1] Professor Kales notes Adams *v.* Savage, 2 Ld. Raym. 854, as an instance of the conscious reluctance of the judges to give the Statute of Uses its full effect.

it leaves all questions of construction to remain a source of doubt and disagreement. But it is submitted that the classification is illogical and inaccurate. As to the first point, consider the validity of estates in class (*b*) that are subject to a condition precedent (which is sure to be determined before the end of the previous estate) and limited after a term for years. Such an estate is said to be good, but the reasoning to support the acknowledged invalidity of such an estate when the condition may not happen until after the end of the term is equally applicable in this case. The reason given in cases in class (*c*) is that the seisin of the feoffor would be interrupted by the subsequent estate. There must be a similar interruption in class (*b*) unless the seisin be from the beginning in the remainderman, but this cannot be, for *ex hypothesi* he gets no seisin except upon the happening of a condition.

But granting the logic of the author in that instance, it is, however, noteworthy that if the theory be accurate, all contingent remainders can be avoided and exactly the same interest be given as a vested remainder by a mere matter of wording, which is really but declaratory of the existing law. Take, for example, an estate to A for life, remainder to such of his children as attain the age of twenty-one. This is admittedly a contingent remainder. Add the magic words, "at or before the termination of A's estate," and the children will have a vested estate, though they be unborn, since the condition is so worded that it must occur, if at all, before A's estate ends, and so the children's estate can come into possession only by way of succession. Further, it is submitted that the inaccuracy of the position taken by the learned writer is in one instance at least very clearly demonstrable. Suppose an estate to A for twenty years, remainder if B die before the end of A's term to the children of B. B is at present a bachelor. By the suggested rule the limitation to the children of B is supported as a vested remainder. The children of B, then, must have the seisin, — not merely the right in inheritance, but the actual seisin. They are the freeholders.[1] But how could a person not *in esse* be responsible for the many feudal duties of a freeholder? In no case, whether after freehold or not, can a remainder be vested unless there is some one in whom it can be and is vested, *ex vi termini*.[2]

The fact that this theory allows an estate to be "vested" in a person not *in esse* points to the fundamental error underlying it, — that the author underrates the importance of the idea of seisin, and consequently looks at vesting in possession and at what are conceived to be conditions precedent thereto, rather than at vesting in interest, which alone can be subject to a true condition precedent. Feudal land law, at least so far as it affected the creation of estates, depended entirely upon seisin. Upon a feoffment to one of a freehold with remainders over unconditionally, the remaindermen were conceived of as being owners of shares in the seisin.[3] This share in the seisin, "the inheritance," was an actual present right in the land.[4] The ownership of this interest carried with it inevitably a right to take possession upon the termination of the previous estate.[5] Such an interest as this is, it is believed, the only vested remainder the law knows. For if the future estate were to commence only upon condition, it would be impossible for the limitee thereof to acquire any interest until the condition happened. It cannot be both that he has the interest now and that his reception thereof is subject to a condition. Since, then, the right to the inheritance cannot immediately pass to the limitee, it must revert to the feoffor[6] (if there is no subsequent vested remainderman), for the fee must be somewhere. Now let us suppose that the condition happens before the end of the particular estate. Can the inheritance thereupon leap from the feoffor to the would-be

---

[1] Lit., § 60.

[2] Fearne, C. R., 9 ed., 9.

[3] Leake, Land Law, 45, 46; Van Rensselaer *v.* Kearney, 11 How. (U. S.) 297, 319.

[4] See Cook *v.* Hammond, 4 Mason (U. S. C. C.) 467, 488; Van Rensselaer *v.* Kearney, *supra*.

[5] Williams, Real Property, 20 ed., 335.

[6] Egerton *v.* Massey, 3 C. B. (N. S.) 338; Gray, Rule Perp., 2 ed., § 113 a.

remainderman? If the condition had not happened until after the end of the particular estate, so that the actual seisin, or possession, had become vested in the feoffor, the common law never did allow it to spring from him. Nor did it originally allow even the inheritance to spring, — contingent remainders were not at first valid.[1] This was logical, for contingent remainders are clearly only executory interests,[2] and all other common law estates are vested. "A contingent remainder is no estate: it is merely a chance of having one."[3] But later, the inheritance, though never the actual present seisin, was allowed to spring upon the happening of the condition from the feoffor to the limitee, who thereupon became a vested remainderman. Even when the condition did not occur until the moment of the ending of the particular estate, it is submitted that the contingent remainder took effect, not as such, but on the theory that it became, though but momentarily, a vested remainder by the springing of the inheritance from the feoffor to the contingent remainderman.

These conclusions necessarily result from the view that when a vested estate is given, it cannot be subjected to any conditions limiting the right to possession that it involves, unless the termination of the previous estate be, inaccurately, deemed such a condition. This is incontrovertible, — otherwise there might be an estate vested in a man, and subject to no other estate, which, however, he might not enjoy, and of which he could not take possession. That is inconceivable. There may, however, be a condition subsequent, the effect of which is, not to prevent the taking of possession under the vested int rest, but to divest entirely that interest. Such an estate being possible, it is a question of fact, of construction, whether such an estate be given, or a contingent remainder. If the remainderman is not *in esse*, there is a contingent remainder. If the remainderman is *in esse*, it is convenient to divide, for purposes of construction, all remainders into two classes, — corresponding to classes (*b*) and (*c*) of Professor Kales' classification. In class (*c*), where the condition may not occur till after the end of the particular estate, it is clear that it would generally be contrary to the intent of the testator to allow the estate to be immediately vested, since that might result in giving the remainderman at common law the fee, or at least, under the Statutes of Wills and Uses, possession during a possible interval between the ending of the particular estate and the happening of the condition; whereas it is almost universally the intent of the feoffor to make possession, at any rate, depend upon the prior happening of the condition. Therefore in such cases all conditions are construed as conditions precedent to vesting, and not as divesting clauses, even if subsequent in form. But in cases arising under class (*b*) of Professor Kales' division where the condition must occur if at all before the ending of the particular estate, the above presumption in favor of a contingent estate has no place, and the remainder is construed either as vested and subject to a condition divesting it, or as contingent, according as the condition is in form subsequent or precedent.[4]

It is submitted that the above result, drawing between vested and contingent remainders the same line that exists between vested estates and any other kind of executory estates, — the result attained by Professor Gray's definition[5] which Professor Kales criticises, — is more logical than the suggested classification, and more in accord with authority.[6]

FEDERAL JURISDICTION IN SUITS BY INDIVIDUALS AGAINST STATES. — Suits by individuals apparently against states, which afford increasingly fre-

---

[1] Williams, Real Property, 20 ed., 346.

[2] 2 Washburn, Real Property, 6 ed., 526.

[3] Williams, Real Property, 20 ed., 359. See also *ibid.*, 348, 353, 361, 366; Leake, Land Law, 337.

[4] Gray, Rule Perp., 2 ed., §§ 104, 105, 108.

[5] Gray, Rule Perp., 2 ed., § 101.

[6] *Cf.* Archer's Case, 1 Co. 66 b; Thomas, note to same case, vol. i, p. 165. See Fearne, C. R., *passim*.